IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21984 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI JAYANTIBHAI LALANI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NIRAV C THAKKAR for Petitioner(s) : 1,
MR AA DAVE, AGP for Respondent NO. 1,
MRS NISHA M PARIKH for Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 13/12/2007

ORAL JUDGMENT

Rule. Mr.A.A.Dave, learned AGP waives service of rule on behalf of respondent State and Ms.Nisha

Parikh, learned advocate waives service of rule on behalf of respondent No.2.

1. By way of filing this petition, the petitioner has challenged the impugned cyclostyled order dated 8.8.2007 passed by respondent No.1 whereby the appeal of the petitioner challenging the order of respondent No.2, i.e. Deputy Collector, Stamp Duty Valuation Organisation, Nadiad dated 28.9.2000, at Annexure.B to the petition.

2. The short facts briefly stated of the present petition are that:

2.1 The petitioner purchased a property bearing Survey No.365, Tika No.9, Nadiad on 18.12.1995 for a consideration of Rs.4,91,771/- by way of registered sale deed. It is the case of the petitioner that after paying the requisite stamp duty, the registered sale deed was given by the respondent authorities. However, there was some typo-graphical error on the first page of the sale deed that it is for Survey Nos.365 and 625. But, according to the petitioner, he has not purchased the property bearing Survey No.625.

2.2 The respondent No.2 issued notice under the provisions of Section 32-A of the Bombay Stamp Act, 1958 (the “Act” for short) stating that the valuation of the property would be Rs.10,35,900/- and hence deficit amount of stamp has been paid and therefore, the petitioner was liable to pay the stamp duty of

Rs.1,03,590/-. It appears that an additional amount of stamp duty has been imposed by respondent No.2 to the extent of Rs.54,390/-. Pursuant to the notice, the petitioner could not remain present before the authority, respondent No.2 imposed the aforesaid amount with penalty of Rs.250/- vide order dated 28.9.2000. It is the case of the petitioner that he had never received the above order dated 28.9.2000 and only very recently, when the petitioner received the notice dated 28.5.2007, he came to know about the aforesaid order.

2.3 Being aggrieved with the aforesaid order passed by respondent No.2, the petitioner preferred an appeal before the appellate authority, i.e. respondent No.1 under the provisions of Section 53 of the Act. As there was some delay, the petitioner also preferred a separate application for condonation of delay inter alia contending that the petitioner was never aware about the above order. It was also submitted that the valuation arrived at by the authority was grossly exaggerated and the same appears to be a mistake on the part of respondent No.2 inasmuch as he appears to have calculated the market value of Survey Nos.365 and 625 though the petitioner had only purchased property bearing Survey No.365.

3. I have heard Mr.N.C.Thakkar, learned advocate appearing for the petitioner and Mr.A.A.Dave, learned AGP. Mr.Thakkar has submitted that the order passed by the authority is in printed Form and no reasons

are assigned in determining the market price of the property. It is mentioned in the order that on the basis of the other documents which were registered, the market price was determined. Therefore, it is prayed that the said order is required to be quashed and set aside. In support of his submission, learned advocate for the petitioner has placed reliance on the following decisions of this Court:

(1)2003(1) GLR 454 Vol. 44 (Pradhyumanbhai Mohanlal Patel v. State of Gujarat, and (2)**2006(3) GLR 2252 (Mayurkumar J.Patel v. Dy. Collector, Stamp Duty Valuation Department, Rajkot).**

In the above decisions, it is held by this Court that without giving any reasons and without applying mind towards any of the defences raised by the petitioner therein, the order is passed in printed Form wherein some gaps have been filled in and one or two sentences have been added. It is also held by this Court that it is the duty vested in the respondent authorities to justify its say for higher market value for the land in question, and thus, the order in question was required to be quashed and set aside.

Mr.Thakkar, learned advocate has also relied upon a decision of this Court in the case of **Manubhai Vaghjibhai Dabhi v. State of Gujarat and ors., reported in 2006(3) GLR 2177**, wherein this Court has

specifically observed that for determination of market value, the necessary document is required to be supplied to the party concerned. He further submitted that for determination of the market value, principles of natural justice has to be followed and the party is required to be given opportunity of being heard before fixing market value and hence the order is liable to be quashed on this ground.

4. Mr.A.A.Dave, learned AGP appearing on behalf of the respondent State has produced an affidavit-in-reply of one Kamlesh J.Rathod, Deputy Collector (Stamp Duty), Valuation Organisation, Nadiad (Kheda) wherein it has been stated that respondent No.2 has passed the order under Section 32(A) of the Act on 28.9.2000 which was sent to the petitioner by RPAD on the same day by Outward No.25120 which was duly received by the respondent and put signature on the RPAD slip. However, the petitioner has chosen not to remain present before the authority concerned and further that the appeal has been filed quite belatedly and hence, it is time barred. According to the learned AGP, therefore, the contention of the learned advocate for the petitioner that the petitioner has not received the order is absolutely wrong and baseless and the appeal filed by the petitioner is rightly rejected.

5. This Court has perused the RPAD slip annexed along with the affidavit-in-reply filed by the concerned Officer which shows that the date of RPAD

slip is 2.9.2000, but the receipt of the same by the petitioner is nowhere mentioned therein. Hence, it may be presumed that though the order dated 28.9.2000 has been passed, the same has been sent to the petitioner quite belatedly, though it is the contention of the petitioner that he has not received the said order.

6. However, on receipt of the notice dated 28.5.2007 from respondent No.2 asking the petitioner to pay the amount as per the order dated 28.9.2000, he preferred an appeal along with an application for condonation of delay in filing the appeal before the appellate authority under the provisions of Section 53 of the Act. However, the appellate authority, without properly appreciating the facts of the case, rejected the appeal filed by the petitioner vide the impugned order dated 8.8.2007 on the ground of delay in preferring the appeal against the order dated 28.9.2000.

7. Considering the facts and circumstances of the case, it is apparent that the impugned order is in Printed Form and only some gaps have been filled up by the authorities without giving any reasons. This clearly shows total non-application of mind on the part of the authorities. Under the circumstances, the impugned order dated 8.8.2007 passed by respondent No.1 is required to be quashed and set aside.

8. In the result, the petition is allowed. The

impugned order dated 8.8.2007 passed by the authority concerned is hereby quashed and set aside. The matter is remanded to respondent No.2 for taking a decision afresh and for passing a speaking order as per the Act, after giving an opportunity of being heard to the petitioner. Respondent No.2 is directed to dispose of the matter accordingly within a period of three months from the date of receipt of the writ of this order.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.D.Shah, J.)

Sreeram.